REMARKS

Claims 14, 16-18 and 20-92 are pending. Claims 14, 16-18, 20-31, 35-51, 55-76 and 80 stand allowed. The amendments are fully supported by the original disclosure and, thus, no new matter is added by their entry. Support for new claims may be found, inter alia, at page 12, lines 3-5, of the specification.

35 U.S.C. 112 – Written Description

The specification must convey with reasonable clarity to persons skilled in the art that applicant was in possession of the claimed invention as of the filing date sought. See *Vas-Cath v. Mahurkar*, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991). But the Patent Office has the initial burden of presenting evidence or a reason why persons of ordinary skill in the art would not have recognized such a description of the claimed invention in the original disclosure. See *In re Gosteli*, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989).

Claims 32-34, 52-54 and 77-79 were rejected under Section 112, first paragraph, as allegedly "containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention." Applicants traverse because a representative number of species within the claimed genus are described in their specification.

Support for using the claimed oil as an additive for (human) food and (animal) feed is found on page 12, lines 3-5, of the specification. Examples of such food or feed include milk, infant formula, health drinks, bread, and animal feed. The claimed foodstuff and/or food supplement are specific embodiments of a composition comprising the oil (see page 15, line 4, of the specification). Similarly, the claimed animal or marine feed composition or supplement are specific embodiments of a composition comprising the oil (see page 15, lines 12-13, of the specification).

Contrary to the allegation on page 2 of the Office Action, food and feed (and any such compositions) are <u>not</u> analogous to the proteins of *Fiers* and *Amgen*. In the latter two cases, the claimed proteins were not yet isolated and their specifications merely provided a protocol for isolating the proteins. Here, there is no dispute that the microbial

oil was in the possession of the inventors when this application was filed. Compositions for use as food and/or feed were also indisputably known in the art. A specification need not teach, and preferably omits, what is well known in the art. See *Hybritech v. Monoclonal Antibodies*, 231 USPQ 81, 94 (Fed. Cir. 1986). Therefore, addition of oil to such compositions as taught in the present specification is an adequate description of this embodiment of the invention and shows Applicants' possession of the invention.

The processes claimed in this application are drawn to manufacture. The human food, animal feed, foodstuffs, and food supplements prepared by such processes are the products of incorporating the oil or an oil mixture therein. This contrasts with the processes described in *Fiers* and *Amgen* that sought to isolate proteins which were previously unknown to the art.

Withdrawal of the written description rejection is requested because the specification conveys to a person skilled in the art that Applicants were in possession of the claimed invention as of the filing date. Their disclosure would teach the skilled person, who possesses general knowledge available in the art, how to make and use claims 32-34, 52-54 and 77-79. If the Examiner is not persuaded to withdraw this rejection for the above reasons, Applicants request an interview to discuss any remaining issues.

Conclusion

Having fully responded to the pending Office Action, Applicants submit that the claims are in condition for allowance and earnestly solicit an early Notice to that effect. The Examiner is invited to contact the undersigned if any further information is required.

Respectfully submitted,

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